



Docket No. MI 6029

AF
IN

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Anteo PELLICONI, et al.

Serial No.: 10/518,882

Group Art Unit: 1796

Filed: December 20, 2004

Examiner: N. M. NUTTER

Title: **IMPACT-RESISTANT POLYOLEFIN COMPOSITIONS**

APPEAL BRIEF UNDER 37 C.F.R. §41.37

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

A Notice of Appeal was filed in the above-captioned application on March 23, 2009. Additionally, a response after final accompanied with a terminal disclaimer to U.S. patent application serial no. 10/499,182 was filed on May 14, 2009, which Applicant believes should place the instant application in condition for allowance; however, to date, nothing has been received from the Office to indicate the instant application is in condition for allowance. Accordingly, Applicant is filing this Appeal Brief by the due date of May 26, 2009, given May 23, 2009 fell on a Saturday and May 25th was a holiday.

In view of comments provided herein, as well as the comments and the terminal disclaimer submitted on May 14, 2009, Applicant respectfully believes all the pending rejections in the instant application should be withdrawn.

U.S. Patent Application
Serial No. 10/518,882

Related Proceedings Appendix

NONE



U.S. Patent Application
Serial No. 10/518,882

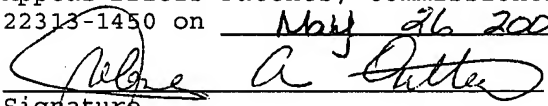
Respectfully submitted,

By:

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Appeal Briefs-Patents, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on May 26 2009.


Signature

May 26, 2009
Date

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Real Party in Interest

The real party in interest with respect to the current U.S. patent application and appeal submitted herein is Basell Poliolefine Italia s.r.l.

U.S. Patent Application
Serial No. 10/518,882

Related Appeals and Interferences

NONE

Status of the Claims

Claim 1: Rejected

Claim 2: Rejected

Claim 3: Rejected

Claim 4: Rejected

Claim 5: Rejected

Claim 6: Rejected

Claim 7: Allowed

Claim 8: Allowed

Claim 9: Allowed

Claim 10: Rejected

Claim 11: Rejected

Status of the Amendments

Applicant filed a response after final along with a terminal disclaimer to co-pending U.S. patent application serial no. 10/499,182 on May 14, 2009. To date, the terminal disclaimer does not seem to have been acted upon by the Examiner.

Summary of the Claimed Subject Matter

In independent claim 1, Applicant is currently claiming polyolefin compositions comprising 55-80% of a crystalline propylene homopolymer or copolymer containing up to 15% of at least one of ethylene and C₄-C₁₀ α -olefin(s) and having a MFR value (230 °C, 2.16 kg) of at least 15 g/10 min; and 20-45% of a copolymer of ethylene with at least one of C₄-C₁₀ α -olefin(s) containing from 10 to 40% of said C₄-C₁₀ α -olefin(s); wherein the compositions having MFR (230 °C, 2.16 kg) values of at least 15 g/10 min, a total content of ethylene of 20% or more, a total content of C₄-C₁₀ α -olefin(s) of 4.5% or more, a ratio of the total content of ethylene to the total content of C₄-C₁₀ α -olefin(s) of 2.3 or more, and an intrinsic viscosity value of a fraction soluble in xylene at room temperature of at most 1.7 dl/g. See page 1, lines 21-32 in Applicant's specification.

In independent claim 10, Applicant is currently claiming injection moulded articles comprising polyolefin compositions comprising 55-80% of a crystalline propylene homopolymer or copolymer containing up to 15% at least one of ethylene and C₄-C₁₀ α -olefin(s) and having a MFR value (230 °C, 2.16 kg) of at least 15 g/10 min; and 20-45% of a copolymer of ethylene with at least one of C₄-C₁₀ α -olefin(s) containing from 10 to 40% of said C₄-C₁₀ α -olefin(s); wherein the compositions having MFR (230 °C, 2.16 kg) values at least 15 g/10 min, a total content of ethylene of 20% or more, a total content of C₄-C₁₀ α -olefin(s) of 4.5% or more, a ratio of the total content of ethylene to the total content of C₄-C₁₀ α -

olefin(s) of 2.3 or more, and an intrinsic viscosity value of a fraction soluble in xylene at room temperature of at most 1.7 dl/g. See page 1, lines 21-32, and page 9, lines 8-32 in Applicant's specification.

Grounds of Rejection to be Reviewed on Appeal

Whether claims 1-6 and 10 are unpatentable for non-statutory, obviousness-type double patenting to co-pending U.S. patent application serial no. 10/499,182.

Whether claims 1-6, 10, and 11 are unpatentable for non-statutory, obviousness-type double patenting to co-pending U.S. patent application serial no. 10/577,270.

Argument

Rejection of Claims 1-6 and 10 for Non-Statutory, Obviousness-
type Double Patenting to claims 1-9 in Co-pending U.S. Patent
Application Serial No. 10/499,182

Claims 1-6:

With respect to the currently appealed rejection of claims 1-6 for obviousness-type double patenting, in order to advance prosecution of the instant application, Applicant filed a terminal disclaimer to co-pending U.S. patent application serial no. 10/499,182 on May 14, 2009. However, to date, the Office has not acted on the terminal disclaimer. Accordingly, given the terminal disclaimer filed, albeit after final, obviates the instant rejection, Applicant respectfully requests the Examiner or the Board of Patent Appeals and Interferences (herein referred to as, "the Board") to enter the aforementioned terminal disclaimer, and withdraw the pending double patenting rejection.

In light of the facts above, Applicant respectfully believes the instant rejection is rendered moot. Therefore, Applicant respectfully requests the Board to overturn the instant rejection.

Claim 10:

Arguments *supra* regarding the rejection of claims 1-6 to co-pending U.S. patent application serial no. 10/499,182 are incorporated herein by reference in their entirety. As with claims 1-6, Applicant filed a terminal disclaimer to co-pending U.S. patent

application serial no. 10/499,182 on May 14, 2009. Therefore, since the terminal disclaimer obviates the instant rejection, Applicant respectfully requests the Examiner or the Board to enter the terminal disclaimer and withdraw the rejection.

In light of the facts above, Applicant respectfully believes the instant rejection is rendered moot. Therefore, Applicant respectfully requests the Board to overturn the instant rejection.

Rejection of Claims 1-6, 10, and 11 for Non-Statutory,
Obviousness-type Double Patenting to claims 14-26 in Co-pending
U.S. Patent Application Serial No. 10/577,270

Claims 1-6 and 11:

As outlined *supra*, with respect to the pending obviousness-type double patenting rejection of claims 1-6 and 10 to co-pending U.S. patent application serial no. 10/499,182, Applicant filed a terminal disclaimer on May 14, 2009 thereto. Accordingly, Applicant respectfully believes the rejection to U.S. patent application serial no. 10/499,182 is rendered moot, and should be withdrawn.

As for the instant rejection of claims 1-6, 10, and 11 to claim 14-26 in co-pending U.S. patent application serial no. 10/577,270, the instant application has a filing date of December 20, 2004, whereas co-pending U.S. patent application serial no. 10/577,270 has a filing date of April 26, 2006. Additionally, MPEP §804 (I)(B)(1) states,

If a 'provisional' nonstatutory obviousness-type double

patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer. If the ODP rejection is the only rejection remaining in the later-filed application, while the earlier-filed application is rejectable on other grounds, a terminal disclaimer must be required in the later-filed application before the rejection can be withdrawn.

Therefore, Applicant respectfully believes since the rejection of claims 1-6 and 10 to co-pending U.S. patent application 10/499,182 has been obviated with the terminal disclaimer filed May 14, 2009, Applicant respectfully believes the instant rejection should be withdrawn.

In light of the facts above, Applicant respectfully believes the instant rejection should be withdrawn.

Claim 10:

Arguments *supra* regarding the rejection of claims 1-6 and 11 to co-pending U.S. patent application serial no. 10/577,270 are incorporated herein by reference in their entirety. As outlined above, since Applicant submitted a terminal disclaimer to co-pending U.S. patent application serial no. 10/499,182, and the instant application is considered the "earlier filed" application, as well as pursuant to MPEP §804 (I)(B)(1), Applicant respectfully believes the instant rejection should be withdrawn.

Claims Appendix

1. Polyolefin compositions comprising, in percent by weight based on a total weight of the polyolefin compositions:

- 1) 55-80% of a crystalline propylene homopolymer or copolymer containing up to 15% of at least one of ethylene and C₄-C₁₀ α -olefin(s) and having a MFR value (230 °C, 2.16 kg) of at least 15 g/10 min; and
- 2) 20-45% of a copolymer of ethylene with at least one of C₄-C₁₀ α -olefin(s) containing from 10 to 40% of said C₄-C₁₀ α -olefin(s);

said compositions having MFR (230 °C, 2.16 kg) values of at least 15 g/10 min, a total content of ethylene of 20% or more, a total content of C₄-C₁₀ α -olefin(s) of 4.5% or more, a ratio of the total content of ethylene to the total content of C₄-C₁₀ α -olefin(s) of 2.3 or more, and an intrinsic viscosity value of a fraction soluble in xylene at room temperature of at most 1.7 dl/g.

2. The polyolefin compositions according to claim 1 comprising, in percent by weight based on a total weight of the polyolefin compositions:

- 1) 55-75% of a crystalline propylene homopolymer or copolymer containing up to 15% of at least one of ethylene and C₄-C₁₀ α -olefin(s) and having a MFR from 15 to 80 g/10 min; and
- 2) 25-45% of a copolymer of ethylene with at least one of C₄-

C₁₀ α-olefin(s) containing from 20 to 40% of said C₄-C₁₀ α-olefin(s);

said compositions having MFR (230 °C, 2.16 kg) values at least 15 g/10 min, a total content of ethylene of 20% or more, a total content of C₄-C₁₀ α-olefin(s) of 6% or more, a ratio of the total content of ethylene to the total content of C₄-C₁₀ α-olefin(s) of 2.3 or more, a total fraction soluble in xylene at room temperature of 18 wt% or higher, and an intrinsic viscosity value of the fraction soluble in xylene at room temperature of at most 1.7 dl/g.

3. The polyolefin compositions of claim 1, having MFR values of at least 30 g/10 min.

4. The polyolefin compositions of claim 1, wherein the intrinsic viscosity of the fraction soluble in xylene at room temperature is in the range from 0.8 to 1.5 dl/g.

5. The polyolefin compositions of claim 1, wherein the fraction soluble in xylene at room temperature is higher than 20%.

6. The polyolefin compositions of claim 1, having a ductile/brittle transition temperature of at most 35 °C.

7. A process for producing polyolefin compositions, which comprise in percent by weight, based on a total weight of the polyolefin

compositions:

- 1) 55-80% of a crystalline propylene homopolymer or copolymer containing up to 15% of at least one of ethylene and C₄-C₁₀ α -olefin(s) and having a MFR value (230 °C, 2.16 kg) of at least 15 g/10 min; and
- 2) 20-45% of a copolymer of ethylene with at least one of C₄-C₁₀ α -olefin(s) containing from 10 to 40% of said C₄-C₁₀ α -olefin(s);

said compositions having MFR (230 °C, 2.16 kg) values at least 15 g/10 min, a total content of ethylene of 20% or more, a total content of C₄-C₁₀ α -olefin(s) of 4.5% or more, a ratio of the total content of ethylene to the total content of C₄-C₁₀ α -olefin(s) of 2.3 or more, and an intrinsic viscosity value of a fraction soluble in xylene at room temperature of at most 1.7 dl/g, the process being carried out in at least two sequential steps, wherein in at least one polymerization step the relevant monomer(s) are polymerized to form component 1) and in the other step the relevant monomers are polymerized to form component 2), operating in each step, except the first step, in the presence of the polymer formed and the catalyst used in the preceding step.

8. The process of claim 7, wherein the polymerization catalyst is a stereospecific Ziegler-Natta catalyst comprising, as catalyst-forming components, a solid component comprising a titanium compound having at least one titanium-halogen bond and an electron-donor

compound, both supported on a magnesium halide in active form, and an organoaluminum compound.

9. The process of claim 7, wherein both components 1) and 2) are prepared in gas phase.

10. Injection moulded articles comprising polyolefin compositions, which comprise in percent by weight, based on a total weight of the polyolefin compositions:

- 1) 55-80% of a crystalline propylene homopolymer or copolymer containing up to 15% at least one of ethylene and C₄-C₁₀ α -olefin(s) and having a MFR value (230 °C, 2.16 kg) of at least 15 g/10 min; and
- 2) 20-45% of a copolymer of ethylene with at least one of C₄-C₁₀ α -olefin(s) containing from 10 to 40% of said C₄-C₁₀ α -olefin(s);

said compositions having MFR (230 °C, 2.16 kg) values at least 15 g/10 min, a total content of ethylene of 20% or more, a total content of C₄-C₁₀ α -olefin(s) of 4.5% or more, a ratio of the total content of ethylene to the total content of C₄-C₁₀ α -olefin(s) of 2.3 or more, and an intrinsic viscosity value of a fraction soluble in xylene at room temperature of at most 1.7 dl/g.

11. The polyolefin compositions according to claim 2 comprising, in percent by weight based on a total weight of the polyolefin

compositions:

- 1) 55-70% of a crystalline propylene homopolymer or copolymer containing up to 15% of at least one of ethylene and C₄-C₁₀ α -olefin(s) and having a MFR value of from 15 to 80 g/10 min; and
- 2) 30-45% of a copolymer of ethylene with at least one of C₄-C₁₀ α -olefin(s) containing from 20 to 40% of said C₄-C₁₀ α -olefin(s);

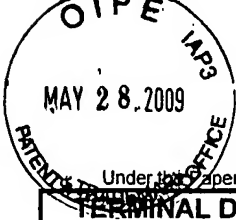
said compositions having values of MFR (230 °C, 2.16 kg) equal to or higher than 15 g/10 min, a total content of ethylene of 20% or more, a total content of C₄-C₁₀ α -olefin(s) of 6% or more, a ratio of the total content of ethylene to the total content of C₄-C₁₀ α -olefin(s) of 2.3 or more, a total fraction soluble in xylene at room temperature of 18 wt% or higher, and an intrinsic viscosity value of a fraction soluble in xylene at room temperature of at most 1.7 dl/g.

Evidence Appendix

Terminal disclaimer filed May 14, 2009

for co-pending U.S. patent application

serial no. 10/499,182 Appendix A



Appendix A

3-17

PTO/SB/25 (04-09)

Approved for use through 05/31/2009. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**TERMINAL DISCLAIMER TO OBTAIN A PROVISIONAL DOUBLE PATENTING
REJECTION OVER A PENDING "REFERENCE" APPLICATION**

Docket Number (Optional)

MI 6029 (US)

In re Application of: Anteo PELLICONI et al.

Application No.: 10/518,882

Filed: December 20, 2004

For: IMPACT-RESISTANT POLYOLEFIN COMPOSITIONS

The owner*, Basell Poliolefine Italia s.r.l., of 100 percent interest in the instant application here by disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of any patent granted on pending reference Application Number 10/499,182, filed on June 16, 2004, as such term is defined in 35 U.S.C. 154 and 173, and as the term of any patent granted on said reference application may be shortened by any terminal disclaimer filed prior to the grant of any patent on the pending reference application. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and any patent granted on the reference application are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

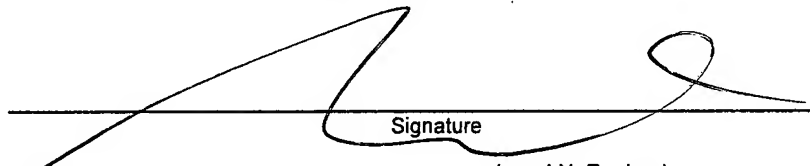
In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of any patent granted on said reference application, "as the term of any patent granted on said reference application may be shortened by any terminal disclaimer filed prior to the grant of any patent on the pending reference application," in the event that: any such patent: granted on the pending reference application: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as shortened by any terminal disclaimer filed prior to its grant.

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I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☒ The undersigned is an attorney or agent of record. Reg. No. 56,566



Signature

Jarrod N. Raphael
Typed or printed name

May 14, 2009
Date

302-683-8176
Telephone Number

- ☒ Terminal disclaimer fee under 37 CFR 1.20(d) is included.

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